

1895-055 Chancery Causes: James A. Newman, recu. vs. William Pennington &
Lee Co.

Phillips

CIA - Estate Dispute
T - Property

- Deed

James A. Newman, Receiver &c.

Plaintiff.)

vs.

In Chancery.

William Pennington at als.

Defendants.)

To the Honorable W.T. Miller, Judge of the Circuit Court for Lee County, Virginia:

Humbly complaining, your orator, James A. Newman, Receiver &c., a citizen of said County, would respectfully represent and show unto your honor;

That, at a circuit court begun and held for Lee County at the Courthouse thereof on Monday the 4th day of March 1895, he was appointed Receiver of the fund in the hands of William Pennington, Guardian for Abbie L. Newman, nee Abbie L. Phillipps, ~~he~~ heir at law of Frances Phillipps, deceased; that on that day he executed bond as such receiver with J.J. Newman, R.D. Planary and Harvey Newman, as his securities, in the penalty of Fifteen hundred dollars; and that thereupon he took the oath prescribed by law in such cases. All of which will more fully appear by reference to the order of said Court appointing him, a copy of which is herewith filed as a part hereof marked "A".

Your orator will further show your honor that, at a County Court continued and held for Lee County at the Courthouse thereof, on Thursday April 5th 1888, one William Pennington was appointed Guardian for Abbie Phillips, Ellen Phillips, Jennie Phillips, and Lear Phillips, minor heirs at law of Frances M. Phillips, deceased; that thereupon the said Wm. Pennington took the oath prescribed by law in such cases, and together with A.N. Pennington, his security, entered into and acknowledged a bond in the penalty of \$2000.00 conditioned according to law. All of which will more fully appear by reference to the order of said Court, a copy of which is herewith filed as a part hereof marked "E".

Your orator alleges that Three Thousand ^{or more} dollars went into said Wm. Pennington's hands as such guardian, and that one fourth part thereof belongs to the said Abbie Newman, nee Abbie Phillips.

Your orator states that the said Wm. Pennington has not for

some time made a settlement of his guardianship for said Abbie and that he does not therefore know the exact sum the said Pennington should turn over to him as receiver for her.

although often requested so to do
Your orator states that the said Wm. Pennington has so far failed and refused to turn over any sum of money to him as Receiver as aforesaid.

Now the object of this bill is to ascertain how much money is in the hands of the said Wm. Pennington as guardian for the said Abbie, and to collect the same, when ascertained, from the said William Pennington and his security, A.N. Pennington.

And being without adequate remedy at law, your orator prays your honor's court of chancery to take cognizance of his cause, and grant him the proper relief. To this end he prays that the said William Pennington and A.N. Pennington be made the parties defendant to this bill; that they each be required to answer the same, but they need not do so on oath, that being waived; that upon a hearing of the cause a commissioner be appointed and required to ascertain and report the amount of money in the hands of the said William Pennington which belongs to the said Abbie Newman; that the said William Pennington be required to pay the sum so ascertained to your orator as receiver for the said Abbie Newman; and, if mistaken in his special prayer, then that full general relief be granted him. May spa. issue &c.

Duncan H. Hyatt, P.Q.

James A. Newman
Receiver &c

03 } Bill in Chy.

Wm Pennington et als.

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee County
and E. W. Pennington trustee

The answer of Cowan, McClung and Co., to a certain bill in
chancery exhibited in this honorable court by J. A. Newman Rec. xxx
against your respondent and others.

For answer thereto, your respondent sayx;

There is now due the said Cowan McClung and Co. the sum of
\$1974.46, with interest thereon from the 3rd day of May, 1895, sub-
ject to a credit of \$110.22, paid Dec. 21, 1895, and another sum
of \$241.66, with interest thereon from the 7th day of Aug. 1895,
and an other sum of \$301.84, with interest from the 7th day of
Oct. 1895, which sums are being upon the 500 acre tract set
out in Complaint and bill the prior to Complaint of judgment here.

And now having answered fully all that your respondents
suppose they are called upon to answer, beg leave to be hence
dismissed with their reasonable cost in this behalf expended.
And they will ever pray &c.

Cowan McClung & Co.

E. W. Pennington Trustee.

By Counsel.

This answer is excepted to because it shows a greater indebtedness than is shown by the deed of trust filed with the bill. A deed of trust given to secure a debt which has not been created at the ~~time~~ date of the trust and the amount of which is not known at the date of the deed of trust, is bad for uncertainty, and cannot give priority over judgments obtained after the date of said trust.

L. F. Ryan.

Brown McCleary & Co. v. Ryan

Ans. M. M. M.

James A. Newsum.

Filed in open Court
and by leave thereof
March 5th 1897

A. B. Muncey
Clerk

1 To the Hon. W. T. Miller, Judge of the Circuit Court for Lee Co/
2 The separate demurrer and answer of Wm. Pennington
3 to a bill of complaint filed against him and A. N. Pennington
4 in your honor's court by Jas. A. Newman rec'r. etc.

5 And for demurrer to said bill of the the said plaintiff,
6 your respondent says that it is not sufficient in law to call
7 upon him to answer, and of this he prays judgement. But if
8 mistaken in this his cause of demurrer, and further answer
9 should be required of him, answering, he says: That it is true
10 that he was appointed as the guardian of the said Abigail
11 Newman, nee Phillips; that the said Jas. A. Newman was as he al-
12 leges appointed receiver by your honor's court; that the said
13 Abigail is a married woman. But your respondent most emphat-
14 ically denys that he has for some time failed to make his set-
15 tlements before the commissioner of accounts, and he denys that
16 the plaintiff did not know the exact amount due from your
17 respondent for he had repeatedly ~~t~~ told him the amount, as he
18 remembers. But if he ^{had} ~~not~~ told him the amount due, the records
19 fully show the ~~same~~, and all he had to do was to step in the
20 clerk's office, and there look for himself. Your respondent
21 avers and alleges, that since he has been guardian for the
22 said Abigail, he has as the law requies made his anual settle-
23 ments before the commissioner, and the same has been duly con-
24 firmed by the County Court of this County, ^{and properly recorded & filed} and as evidence of
25 this allegation, he here files a certified copy of his last
26 ^{marked "B"} settlement. From this settlement it will be seen that your re-
27 spondent owes the said Abigail, the sum of \$805.82 1/2 with
28 interest thereon from the 1st. day of March? 1895, subject to a
29 ^{paid since that day} few dollars credit, which the pliantiff ~~knows~~ all about and
30 ^{as well as your Respondent} the amount thereof. Your respondent does not remember this a-
31 ^{mount,} mount, as he has left his book of accounts at home, but it
32 will not exceed \$100.00. Now having answered as fully as he
33 is advised that it is material for to answer, he prays to be

hence dismissed with his reasonable costs in this behalf expended. And he will ever pray etc.

~~The Plaintiff~~
per ... *Pennington Bros.*

P.D.

1/31
of
the
year
1880
at
the
city
of
London
England

Wm. P. Huntington

ad. Answer

J. A. Newman Recd

Filed in open court
and by leave thereof
Novr the 8th 1898.

A. B. Munsey
Clerk

James A. Newman, Receiver.

Plaintiff

vs.


In Chancery.

Wm. Pennington et als.

Defendants.

This cause came on this day to be heard upon the bill of the complainant and the answer of the defendant William Pennington and exhibit therewith, and was argued by counsel. And it appearing to the court that process has been served upon A.N. Pennington for more than 15 days before the first day of this term of the court, and that he has failed to appear, plead or demur to said bill, it is taken for confessed as to him. And it appearing from the exhibit filed with the answer of the said William Pennington that there is due from him to his ward the said Abbie Newman the sum of \$805.82 1/2 as of the 1st day of March 1895, it is therefore adjudged ordered and decreed that the plaintiff recover of the defendants the sum of \$805.82 1/2 ~~cents~~ eight hundred and five dollars and eighty two and on half cents with interest thereon from the first day of March 1895 til paid subject to such credits as the said William Pennington may show that he has paid to the said Abbie or her receiver since that date. It is further adjudged, ordered and decreed that the plaintiff recover his costs in this behalf expended, but by agreement of parties in taxing said costs the clerk will tax against said defendant's an attorney's fee of only \$2.50, and by like agreement upon the part of the complainant no execution is to issue ~~for the~~ upon this decree until ^{after} the 1st day of May 1896 until which time the said William Pennington is given to furnish the credits aforesaid. And this cause is stricken from the docket.

James A. Newman Receiver

vs  Decree final.

Wm Pennington et als.

O. B. P. 279

Enter this decree

November 13th 1895.

171 210

Virginia.

At a Circuit Court begun and held
for Lee County, at the Court-house
thereof on Monday March 4th 1895.

On motion of James A. Newman,
The Court doth appoint him receiver
of the fund now in the hands of William
Pennington, Guardian for Abbie L. New-
man, nee Abbie L. ~~Newman~~ Phillips,
heir at law of Francis Phillips, deceased,
and thereupon the said James A. Newman
with J. J. Newman, R. D. Flanary and
Harvey Newman, his sureties, who be-
ing questioned severally as to their
sufficiency, entered into and acknowl-
edged a bond ~~severally~~ in the penalty
of Fifteen hundred dollars conditioned
according to law: and thereupon the
said James A. Newman took the oath
prescribed by Law.

W. T. Miller -

A. Copy from the records: -

Teste: A. B. Munsey Clerk.

James A. Newman
vs $\frac{3}{2}$ Order.

Wm Pennington et al.

"A"

Virginia

At a County Court continued and held for Lee County at the Court house thereof, on Thursday Apl. 5th 1888

On motion of Wm Pennington he is appointed Guardian for Abbie, Ellen Jennie & Lear Phillips, minor heirs at law of Frances M. Phillips, dead. and thereupon said Pennington took the oath prescribed by law, and together with A. N. Pennington, his security, entered into and acknowledged a bond in the penalty of \$2000.00 conditioned according to law.

C. I. Duncan.

A copy from the records

Teste: S. T. F. Richmond
Clerk

James. A. Newman

vs $\frac{3}{2}$ Copy Order

Wm Pennington

"B"

Wm Pennington Guardian for the minor heirs of
 F. M. Phillips dec'd to wit Abigail, Ellen, Jennie &
 Lee Phillips.

To his said Wards

Dr

1895	March	To this sum shown to him his hands	3008.11
	"	" " " Interest thereon to 13.95	180.48
	"	" " " Total Est - Mr. 1 st 1895,	3188.59
1		By this sum paid Taxes for 1894	34.02
2	"	" " " " H. J. Morgan atty	19.44
3	"	" " " " Abigail	3.71
4	"	" " " " Ellen	53.71
5	"	" " " " Jennie	10.00
6	"	" " " " Lee	10.00
7	"	" " " " for Settlement	5.00
	"	" " " " Recording	2.00
		By 10% Com on \$136.38 disbursed	13.63
		By this sum in hand to guard	\$3037.58 \$3188.59

1895	Nov 1 st	To this sum in Guardian's hands belonging to all four of his Wards	\$3037.58
		Of this sum Abigail is due \$805.87 1/2	
	"	" " " Ellen " "	633.98 1/2
	"	" " " Jennie " "	798.88 1/2
	"	" " " Lee " "	798.88 1/2 \$3037.58

Virginia

At a county court continued and held
 for Lee County at the Court house thereof on
 Wednesday August 21st 1895. Wm Pennington
 Guardian for F. M. Phillips heirs, this day
 produced to the court a Settlement and report
 of his Guardian ship account made by
 G. Hyatt Commissioner of account for Lee
 County, which Settlement and report having
 been filed in the office of the clerk of this court
 the time required by law, and were referred to

Seen and inspected by the Court, is confirmed
and Ordered to be recorded,
A. Copy- Teste, S. V. F. Richmond Clerk

Virginia Lee County - to wit:
S. V. F. Richmond Clerk of the
County Court for said County, in
the State of Virginia, do hereby Certify
that the foregoing writing is a true trans-
cript from the records in my office. Given
under my hand this 12th day of Oct 1890
S. V. F. Richmond Clerk

Commissioner's Office,

June 27th 1895,

To the County Court of Lee County;

Your Commissioner reports to the Court, that on the 3rd day of June 1895 W^m Pennington Guardian for Abigail, Ellen, Jennie & Lee Phillips exhibited before your Commissioner a statement of all the money which he, the said W^m Pennington had received or become chargeable with or disbursed within the year ending March 1st 1895, together with the vouchers of such disbursements; that the Commissioner embraced the said Pennington in the list of fiduciaries, whose accounts were before him for settlement, which was posted at the front door of the Court house of said county, on the first day May Court last, and on the date of this report (ten days having since elapsed) has made up and completed the foregoing account of the said W^m Pennington as such Guardian and on the 1st March 1895 finds he is due Abigail \$805.84 1/2 Ellen \$633.95 1/2 Jennie \$798.88 1/2 and Lee \$798.88 1/2 on the 1st day of March 1895, finds a balance of \$3037.58, due his said four wards asset out above of which sum \$00.00 is interest.

The account is substantiated by satisfactory vouchers, and is herewith returned.

Your Commissioner further reports to the Court that the bond given by the said W^m Pennington is in a sufficient penalty and with reasonably sufficient sureties, and is such as the

law requires he has told Ellen's husband
a tract of land which more than settles
his liability to her which when she arrives
of age will be fully adjusted.

Given under my hand, as Commissioner of
Accounts of the said Court, on the day and
year first aforesaid.

J. A. S. Lyatt, Comr.

A copy - Title: S. V. R. Richmond (Acad.)

Wm. Cunningham, Guardian

for M. P. Phillips

Recorded in Librarian's

Book, Page 308.

S. H. Richmond

c 75-

"4"

This deed made and entered into this 3rd day of May 1895; by and between William Pennington and Barbara J. Pennington, parties of the first part, E. W. Pennington, trustee, party of the second part, and all of Lee County Va. Whereas the said William Pennington is justly indebted to Cowan, McBlung & Company, of Knoxville, Tennessee, in the just and full sum of (\$1974.46) nineteen hundred & seventy-four & $\frac{4}{100}$ dollars due and payable as follows, to wit: One day after this date, which sum of money is evidenced by the note of the said William Pennington of even date with this deed, and which sum of money ~~is evi-~~
~~denced~~ The said Pennington waiving the benefit of the homestead law, hereby promises and binds himself to pay. And the said William Pennington being engaged in the mercantile business, and being desirous of obtaining from the said Cowan McBlung & Company farther credit, and he being willing and desirous of securing to the said Cowan

McClung Company the payment of the said sums of money and also the any - sum or sums of money which may hereafter become due to them for any goods, wares, and merchandise or money which they may sell, or let the said William Pennington have in the next four years, they the said William Pennington and Barbara J. Pennington, his wife, do and each of them doth hereby give, grant, bargain, and sell and convey unto the said E. W. Pennington, Trustee &c. the following described tracts of land lying and being in Lee County, Virginia, in the "Pocket" country and bounded as follows, to wit: The first of which tracts of land is bounded as follows, to wit: Beginning on the Southern corner of the land known as the Mallett land, thence S. 26 E. 50 or 60 poles to two white-oaks on a steep hill-side, near the top of a hill S. 7 1/2 E. 28 poles to a white oak Stump in Robert Stapleton's lot near Stone Creek, S. 34 E.

Crossing said creek 22 poles to Three
spruce pines, on the North side of
Stone Mountain, thence N. 39 E. 52
poles to two maples and a beech
on the old McBreedie line, and with
said line S. 39½ E. about 275 poles to
the old Preston line, thence eastward
with the Preston line to a line a-
greed upon between Wm. Pennington
and the said William Pennington, thence
with said agreed line N 23½ W. poles
to the top of the Stone Mountain to a
maple, thence with the top of said
Mountain to the Hanging Rock,
thence to a large Rock in the middle
of the North Fork of Powell's River,
thence with said Mountain East-
ward to its top again to A. N. Pen-
nington's corner, east of Beeslin's
Gap, thence with said A. N. & J. D. Pen-
nington's lines westwardly to the top
of Fork Ridge to a birch, thence with
the top of said Ridge to the mouth
of Straight Creek, thence with J. D.
Pennington's line to the top of Lone
Mountain to said Mallet's line, thence
with the said Mallet line to the Be-
gunning, and supposed to contain 500

acres more or less

The second of said tracts is the same land which was on the tenth day of October 1891 by the said William Pennington and wife conveyed to the said Chas. E. Mallett, and which deed is of record in the County Court Clerk's Office of Lee County, and to which reference is here made for a more particular description of this land, and is supposed to be 994 acres. This last mentioned tract of land was on the day aforesaid conveyed to the said Mallett in consideration of \$15.00 per acre for 824 acres of the same, and \$25.00 per acre for 170 acres of the same, on time, and the said Mallett has not paid for the same, and has left the country, and the report is that he has abandoned his purchase, but in the event he has not abandoned his purchase and there being yet unpaid on the same about the sum of \$17000.00 which sum of money is yet due to the said William Pennington, then and in that event, the said William

Pennington doth hereby assign and transfer to the said E. W. Pennington the said debt due on said land.

In Trust, nevertheless, and for the purposes and uses following and none other, namely: that the said William Pennington shall be suffered to remain in the possession of the said lands, until default be made in the payment of the said sum of money due and to become; And when the said William Pennington shall make default in the payment of the said sum of money now due, or that may hereafter become due to the said Cowan McBlung & Company reason of any goods that they may hereafter let the said William Pennington have on credit, then and in that event, on the request of the said Cowan McBlung & Company, their representatives, or assigns, the said E. W. Pennington shall, after advertising the time, terms and place of sale in three public places in Lee County for thirty days at such place as he may deem proper offer the said land or enough thereof to pay any sum of money that may then

be due to said Cowan McBlung & Company for sale to the highest bidder for cash in hand, and out of the proceeds of such sale, he will pay off, first all expenses attending the execution of this deed of Trust and commissions of sale, and second, he will pay to the said Cowan McBlung & Company whatever may due them, or their assigns, and the residue he will pay to the said William Pennington or his assigns. But if the said William Pennington shall make no default in the payment of said sums of money, then this deed to be null and void, otherwise to remain in full force and virtue. As to the said lands hereby conveyed, and the said debt hereby assigned, the said William Pennington doth hereby covenant to warrant generally the title thereto. Witness the following signatures and seals the day and year first above written.

William Pennington (Seal)
Barbara J Pennington (Seal)

Virginia, Lee County, to wit:

I, J. F. Burgin, a Justice of the Peace in and for the County and state aforesaid, do hereby certify that William Pennington and Barbara J. Pennington, whose names are signed to the writing above, bearing date on the 3rd day of May 1895, have acknowledged the same before me in my County aforesaid. Given under my hand this the 6th day of May 1895.

J. F. Burgin, J. P.

Virginia, Lee County, to wit:

In the Office of the Clerk of said County, the 7th day of May 1895, this deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: S. V. F. Richmond, Clerk.

Virginia, Lee County, to wit:

I, S. V. F. Richmond, Clerk of the County Court for the County of Lee in the State aforesaid, do certify that the foregoing is a

True transcript from the records
in my office. Given under my
hand this the day of January
1897.

James A Newman

13 3/4 Chancery. B

Wm Pennington et

alio.

Wm Pennington

Lo 3/4 Copy of deed

E. W. Pennington, Trust

"B"

Copy \$1.50 Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

*Wm Pennington and
A. N. Pennington*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held
for the said Court on the *3rd* Monday in *October*, 189*5*, to answer a

bill in Chancery, exhibited against *them* in our said court by

*James A. Newman Receiver of Abbie L.
Newman nee Abbie L. Phillips*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-
house, the *4th* day of *October*, 189*5*, and in the

11/*20*th year of the Commonwealth.

A. B. Munsey Clerk.

James A. Newnan
vs. { SUPENA
Wm Pennington et al { IN CHANCERY.

Duncan & Hyatt p. q.

To 2nd Oct Rules,
Circuit Court.

Executed Oct 9
1895 By Deliber
ing copy of
the writ in ^{sanction}
to Wm Pennington and
A. N. Pennington
By E. S. Fletcher & S
for W. P. Weston
S. L. L.

James A. Newman.

vs $\frac{1}{2}$ In Chancery -
 $\frac{1}{2}$

Wm Pennington et als

Duncan & Hyatt, p. y.

1895 2nd Oct rules bill filed

Spa 2- sealed & Decree made

" 1st Nov rules taken the
last Monday in Oct & in
Court & came set for hearing

Plffs Costs

C 287

Sur 150

Shff 100

Atty 250

Co C 25

812

Co. C.

Nov Term 1895 Decree
final Chcy Order Book
5 Page 279

805:825-
each to four, with
int. from March 1/95.

82.2 3.300

1398 .86

int. to 14 Nov.
To March, 1897.

1796